

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ROBERTO BRISENO, PRO SE,
also known as ANTONIO SOLIS,
TDCJ-CID No. 922092,

Plaintiff,

v.

RICK THALER ET AL.,

Defendants.

§

2:12-CV-0211

ORDER OF DISMISSAL

Plaintiff ROBERTO BRISENO, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against various defendants employed by or otherwise associated with the Texas Department of Criminal Justice and has been granted permission to proceed *in forma pauperis*.

On October 9, 2012, a Report and Recommendation was issued by the United States Magistrate Judge analyzing plaintiff's complaint and recommending dismissal with prejudice as frivolous, as frivolous until the *Heck* conditions have been met, and for failure to state a claim on which relief can be granted.

Plaintiff filed a pleading entitled "Motion for Reconsideration, on October 26, 2012, which the Court construes to be his objections. By his objections, plaintiff states another inmate filed all the paperwork connected with this suit and all plaintiff did was sign the papers. Plaintiff is reminded that he signed the complaint under penalty of perjury and plaintiff is responsible for reading each statement contained in his complaint and signing it only if everything in it is truthful and exactly as he wants it. Plaintiff is also responsible for any other document he signs which is filed in this Court.

Having another inmate prepare those documents does not relieve plaintiff of his responsibility or allow him to shift it to the shoulders of someone else.

Plaintiff states that, if the Court's analysis of his claims against defendants BERGER and GING are correct, he wishes to dismiss his claims against them. Plaintiff also states that he is suing defendant THALER for injunctive relief and monetary damages and that "[i]f the Honorable Honor disagrees to this then, Plaintiff wishes to dismiss defendant Rick Thaller [sic] from lawsuit."

Plaintiff goes on to say he is not suing for return of his lost goodtime or to have disciplinary case overturned. The remaining defendants would be the FULLER, the disciplinary hearing officer, and VICK, whom plaintiff says utilized unnecessary and excessive force.

The relief plaintiff requests is monetary relief and injunctive relief forbidding TDCJ from finding inmates guilty based solely on the verbal and written testimony of the officers. An award of monetary relief against defendant VICK would inevitably cast into doubt the validity of plaintiff's disciplinary hearing and its result and falls squarely within the ambit of *Edwards v. Balisock*. 520 U.S. 641, 117 S.Ct. 1584, 1589, 137 L.Ed.2d 906 (1997).

As to plaintiff's request for injunctive relief forbidding TDCJ from finding inmates guilty based solely upon the verbal and written testimony of officers, it is settled law that federal courts do not review the sufficiency of evidence at a disciplinary hearing, and sufficient support for a finding of guilt is provided by "some facts" or "any evidence at all." *Gibbs v. King*, 779 F.2d 1040, 1044 (5th Cir. 1986), *cert. denied*, 476 U.S. 1117, 106 S.Ct. 1975, 90 L.Ed.2d 659 (1986); *Smith v. Rabalais*, 659 F.2d 539, 545 (5th Cir. 1981), *cert. denied*, 455 U.S. 992, 102 S.Ct. 1619, 71 L.Ed.2d 853 (1982). Plaintiff's claim in this respect lacks an arguable basis in law and is frivolous. *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the objections filed by the plaintiff.

The Court is of the opinion that plaintiff's objections should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court, as supplemented herein

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge, as supplemented herein

IT IS THEREFORE ORDERED that the Civil Rights Complaint by ROBERTO BRISENO is DISMISSED WITH PREJUDICE AS FRIVOLOUS, AS FRIVOLOUS UNTIL THE *HECK* CONDITIONS HAVE BEEN MET, AND FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

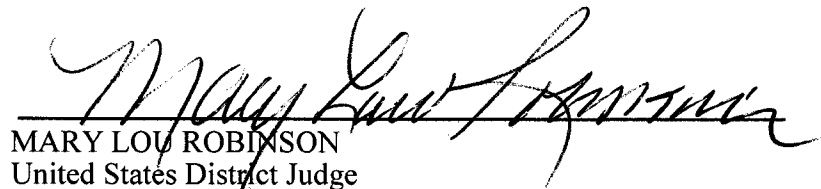
LET JUDGMENT BE ENTERED ACCORDINGLY.

Any pending motions are DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

It is SO ORDERED.

Signed this the 31st day of October, 2012.


MARY LOU ROBINSON
United States District Judge